

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2011-529

**DARLENE RUTH SIMMONS,
aka DARLENE RUTH PIERCY
389 County Road 214
Eureka Springs, AR 72631**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Registered Nurse License No. 352297

Respondent.

FINDINGS OF FACT

1. On or about December 15, 2010, Complainant Louise R. Bailey, M.Ed., RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2011-529 against Darlene Ruth Simmons, aka Darlene Ruth Piercy (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about September 30, 1982, the Board of Registered Nursing (Board) issued Registered Nurse License No. 352297 to Respondent. The Registered Nurse License expired on February 28, 2010, and has not been renewed.

3. Business and Professions Code section 118(b) provides, in pertinent part, that the suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department shall not, during any period in which it may be renewed, restored, reissued, or

1 reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding
2 against the licensee upon any ground provided by law or to enter an order suspending or revoking
3 the license or otherwise taking disciplinary action against the licensee on any such ground.

4 4. On or about December 15, 2010, Respondent was served by Certified Mail and First
5 Class Mail copies of the Accusation No. 2011-529, Statement to Respondent, Notice of Defense,
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
7 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
8 Code section 136 and California Code of Regulations, title 16, section 1409.1, is required to be
9 reported and maintained with the Board, which was and is:

10 389 County Road 214
11 Eureka Springs, AR 72631.

12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 5. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 6. Respondent failed to file a Notice of Defense within 15 days after service upon her
22 of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
23 No. 2011-529.

24 7. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

26 ///

27 ///

28 ///

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2011-529, finds that the charges and allegations in Accusation No. 2011-529, are separately and severally true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,027.50 as of January 24, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Darlene Ruth Simmons, aka Darlene Ruth Piercy has subjected her Registered Nurse License No. 352297 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Violation of Business and Professions Code section 2761, subdivision(a)(4), in that on or about March 10, 2009, Respondent entered into a Consent Agreement with the Arkansas Board of Nursing to discipline Respondent's Arkansas Nurse License No. R80813, and wherein Respondent admitted that, while working for Northwest Arkansas Homecare in Holiday Island, Arkansas, she diverted pain medication from patients on several occasions over a period of two (2) years. As a result, Northwest Arkansas Homecare terminated Respondent's employment on or about October 18, 2008. The Arkansas Board of Nursing placed Respondent's Arkansas Nurse License No. R80813 on probation for a period of two (2) years.

///

///

///

ORDER

IT IS SO ORDERED that Registered Nurse License No. 352297, heretofore issued to Respondent Darlene Ruth Simmons, aka Darlene Ruth Piercy, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 14, 2011.

It is so ORDERED March 15, 2011

Jeanne K. Reeves

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID:LA2010601317
70426066.doc

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation No. 2011-529

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2011-529*

12 **DARLENE RUTH SIMMONS, AKA**
13 **DARLENE RUTH PIERCY**
14 **389 County Road 214**
Eureka Springs, AR 72631
15 **Registered Nurse License No. 352297**

A C C U S A T I O N

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about September 30, 1982, the Board of Registered Nursing issued Registered
22 Nurse License Number 352297 to Darlene Ruth Simmons, aka Darlene Ruth Piercy
23 ("Respondent"). The Registered Nurse License expired on February 28, 2010, and has not been
24 renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

5. Section 118, subdivision (b) of the Code provides, in pertinent part:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

7. Section 2761 of the Code provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • •

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action...”

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

///

///

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the Arkansas State Board of Nursing)

9. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(4), on the grounds of unprofessional conduct in that Respondent was disciplined by the Arkansas State Board of Nursing ("Arkansas Board").

10. On or about March 19, 2009, pursuant to the Consent Agreement and Order issued by the Arkansas Board, in the disciplinary action entitled *In the Matter of: Darlene Ruth Simmons RN License No R80813*, the Arkansas Board having received sufficient evidence to take disciplinary action against Respondent's professional nursing license, placed Respondent's Registered Nurse License on probation for two years. As conditions of probation, Respondent was ordered to complete continuing education courses, participate in substance abuse treatment, submit to drug testing, abstain from use of controlled substances, including alcohol, and pay fines. The basis for the disciplinary action is as follows:

- a. On or about October 18, 2008, while on a home visit, Respondent diverted ten Hydrocodone pills for her personal use.
- b. On or about October 18, 2008, Respondent was terminated from her position with Northwest Arkansas Homecare, Holiday Island, Arkansas.
- c. On or about December 12, 2008, Respondent admitted in a written statement that she diverted pain medications from patients on several occasions for a period of over two months.
- d. On or about March 19, 2009, Respondent was placed on probation with the Arkansas Board.

11. On or about November 4, 2009, Respondent acknowledged that she could not comply with probation and that she was diverting pain medications again for her own personal use.

12. On or about November 12, 2009, Respondent voluntarily surrendered her Registered Nurse License to the Arkansas Board.

///

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 13. Respondent is subject to disciplinary action under Code section 2761, subdivision
4 (a), in that Respondent committed acts of unprofessional conduct. The conduct is more
5 particularly described in paragraph 10, subparagraphs (a) through (d), and paragraphs 11 and 12,
6 inclusive, above, and herein incorporated by reference.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 352297, issued to Darlene
11 Ruth Simmons, aka Darlene Ruth Piercy;
- 12 2. Ordering Darlene Ruth Simmons, aka Darlene Ruth Piercy to pay the Board of
13 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
14 pursuant to Business and Professions Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16
17
18

19 DATED: December 15, 2010

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

20
21
22
23 LA2010601317
24 60585967.doc
25
26
27
28